

DECISION



20042 MORRO
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-211633

DATE: June 3, 1983

MATTER OF: Radicon, Inc.

DIGEST:

1. Protest to GAO against rejection of bid and cancellation of solicitation is untimely where it was filed more than 10 days after agency issued new solicitation and opened bids in the face of the protest pending before it.
2. Since protest to agency against alleged improprieties in solicitation was not filed prior to bid opening, subsequent protest to GAO is untimely.

Radicon, Inc. (Radicon), protests against an award to any other bidder under solicitation No. DACA-45-83-B-0050 issued by Newport Army Ammunition Plant, Newport, Indiana. Radicon alleges the solicitation was issued under improper circumstances. We dismiss the protest.

Radicon essentially contends that the solicitation is tainted because the procuring agency improperly rejected its low bid under a prior solicitation for the same requirement. Radicon states that under the prior solicitation, when the bids were opened on January 18, 1983, it was the apparent low bidder with a base bid of \$674,500. The other bidders had base bids of \$795,000 and \$849,000. Radicon indicates, however, that the contracting agency rejected all bids. Two bids were rejected because the bidders failed to acknowledge the amendments and the prices were too high. Radicon's bid was rejected because it failed to submit paint certification and installer qualifications.

Radicon asserts it protested the rejection of the bid to the procuring agency. Nevertheless, it states that on February 18, the procuring agency issued the solicitation protested here. The same bidders submitted bids on March 8, 1983, and Radicon was the second lowest bidder. Radicon argues that the solicitation's only changes, particularly deletions of the requirements it was found nonresponsive to

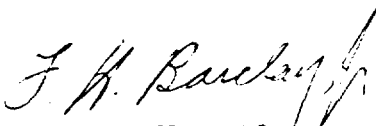
025773

in the prior solicitation, demonstrate the prior bid's responsiveness. In addition, Radicon believes the other bidders have been provided the opportunity to match its bid. Therefore, on March 9, Radicon again protested to the contracting agency.

Our Bid Protest Procedures provide that if a protest has been filed initially with the contracting agency, any subsequent protest to our Office, in order to be considered, must be filed within 10 days of formal notification of or actual or constructive knowledge of initial adverse agency action, provided the initial protest to the agency is filed in accordance with our procedures. If a firm files a protest with the contracting activity which is based on alleged improprieties that were apparent from the invitation as issued, a subsequent protest to our Office will be considered on the merits only if the initial protest was filed before bid opening. See 4 C.F.R. § 21.2(a) and (b)(1) (1983). The Radicon protest to our Office was filed on April 28.

First, we construe the procuring agency's issuance of a second solicitation for the same requirement, accompanied with the opening of bids, without any corrective action on Radicon's initial protest as adverse agency action on that protest. See Illinois Bronze Paint Co., B-206862, February 3, 1982, 82-1 CPD 82. Radicon's protest to our Office was filed more than 10 days thereafter and is, therefore, untimely. 4 C.F.R. § 21.2(a) (1983). Second, the changes contained in the new solicitation, which Radicon competed under, were apparent from the solicitation prior to bid opening. Since Radicon protested to the agency after bid opening, its protest was untimely and the subsequent protest to our Office is not for consideration. 4 C.F.R. § 21.2(b)(1).

Accordingly, we dismiss the protest.

For 
Harry R. Van Cleve
Acting General Counsel